

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-206

June 5, 2001

MARCHAIN CRANE
Appeal of Consumer Assistance Division Decision
#2001-9708 Regarding Pine Tree Telephone Company

ORDER DECLINING
TO OPEN
INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order we decline to investigate the decision of the Consumer Assistance Division (CAD) regarding a complaint filed by Marchain Crane against Pine Tree Telephone and Telegraph Company (Pine Tree or the Company). In that decision, the CAD ruled that Pine Tree, which is an independent local exchange carrier in Maine, had correctly decided that the service it provided over two (out of three) telephone access lines to Mr. Crane's residence was business service. We decide that the CAD relied on reliable and sufficient evidence to make that determination and we will not investigate this matter further.

Like most local exchange carriers, Pine Tree charges a higher rate for a business telephone line than it does for a line that serves a residence. Pine Tree's terms and conditions states that "Service is furnished at business rates if the use of the service is primarily or substantially for business purposes, or if the service is furnished at a business location, or if the service is advertised for business purposes."

Nothing in the record developed by the CAD indicates that Mr. Crane's residence is a "business location" or that "the service is advertised for business purposes." Instead, Pine Tree's determination and the CAD's ruling are based on evidence that the service over the two lines is used "primarily or substantially for business purposes."

Until about October of 2000, the Company appears to have billed the three lines separately. A February 23, 2001 letter from the Company to Mr. Crane states that, in October of 2000, the Company was "in the process of combining the three bills to one to make it simpler and more convenient to [Mr. Crane]." On October 18, 2000, Mr. Crane requested that Pine Tree send him a separate bill for two of the lines because the employer reimbursed him for those lines. At that time, Pine Tree made the

determination that the two lines (657-5204 and 657-5224) were used primarily for business purposes.¹ The Company's log, two letters the Company sent to Mr. Crane and one letter the Company sent to the CAD variously state that the Company asked Mr. Crane if the lines were used for business purposes and he stated that they were, that the Company representative said they were used for business purposes and Mr. Crane agreed, and that "it was determined" that the two lines were business lines. All of these documents state that Mr. Crane agreed that the two lines should be billed under the name AEP, Inc. Subsequently, on November 10, 2000, Mr. Crane requested that the toll charges for the two lines that the Company had characterized as business lines be separated.

On February 2, 2001 Mr. Crane complained to the Company about its "business service" classification. On February 22, 2001, he complained to the CAD about the classifications of the two lines. In his letter appealing the CAD decision, and in an earlier letter to the Company Mr. Crane claims, as to one or more lines, that they were "occasionally" used for business calls.² He argued to the Company that "If you are going to charge me extra for occasionally using my phone for business purposes, you better do the same for everyone who has a job and calls their work."

Mr. Crane's business usage on the two lines appears to be far more frequent than "occasional." In a letter dated February 27, 2001, the Company provided the CAD with bills for intrastate and interstate toll usage for two months for each of the two lines. Those bills showed a substantial number of toll calls; there were high calling volumes to each of many phone numbers. The vast majority of intrastate calls were placed during daytime hours on weekdays. Interstate calls were almost exclusively placed during weekday daytime hours. The February 27 letter also stated that the Company had taken a "random sample of telephone numbers that appeared frequently on the bills" and that they were all to businesses, including one to Mr. Crane's voice mail number at AEP.

¹We interpret the first test in Pine Tree's term and condition as requiring that the service be used "primarily" for business purposes. The inclusion of the alternative "substantially" creates a certain amount of ambiguity in this test. If Pine Tree intends that "substantially" is to have a meaning that is different from "primarily," both terms should not coexist in the same provision. If "substantially" is intended to convey some greater level of use than "primarily," then it is surplusage; there would never be a need to find that level of use once Pine Tree had found that a line was used "primarily" for business purposes. If Pine Tree intends "substantially" to convey a lesser level of use than "primarily" there is no need for the latter term. We will construe this somewhat ambiguous provision against the drafter and apply the more precise term (primarily). We suggest that Pine Tree remove the word "substantially" from this provision.

² He also states "This is a house NOT a business." As noted above, whether his house is a "business location" is not the issue in this case.

The CAD forwarded a copy of the February 27 letter and other information provided by Pine Tree to Mr. Crane. He has not disputed Pine Tree's claim that the vast majority of his usage on the two lines in question is business-related.

We rule that the Consumer Assistance Division's ruling in this case is supported by the record and decline to investigate this matter further. Accordingly, we uphold the decision of the CAD.

Dated at Augusta, Maine, this 5th day of June, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
 Diamond

COMMISSIONER ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.